ANNUAL REPORT

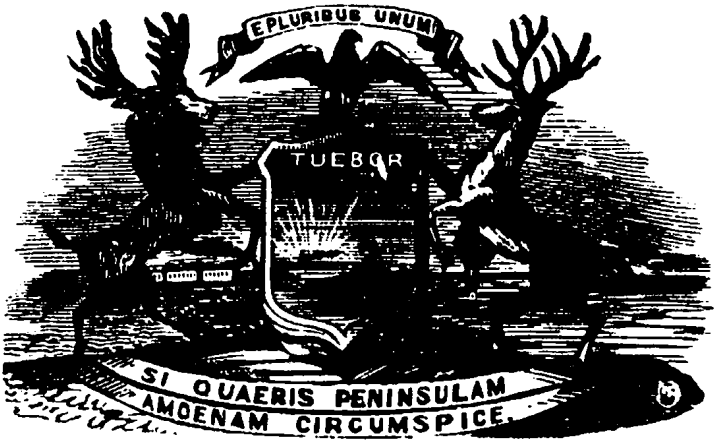
OF THE

ATTORNEY GENERAL

OF THE

STATE OF MICHIGAN,

FOR THE YEAR 1860.



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1860.

REPORT.

ATTORNEY GENERAL'S OFFICE,
December 31st, 1860.

To the Honorable the Legislature of the State of Michigan:

I have the honor to submit my official report for the year 1860.

The case of William Tyler, mentioned in may last report, in which the prisoner was charged with having murdered Captain Henry Jones, on board the brig Concord, lying in Canadian waters, was removed, upon a writ of error and bill of exceptions, to the Supreme Court of the State, and at the last April term thereof, was argued and decided. The Court affirmed the judgment below, and directed the sentence to be carried into execution. Tyler was accordingly committed to the State prison, where he is now undergoing the punishment due to his crime.

On the argument of this case, a question of some delicacy, as well as novelty, arose, touching the power of the State to enact the provision found in section 5944 of the compiled laws (vol. 2, p. 1566). The clause is in the following words: "If any such mortal wound shall be given, or other violence or injury shall be inflicted, or poison administered, on the high seas, or any other navigable waters, or on land, either within or without the limits of this State, by means whereof death shall ensue, in any county thereof, such offense may be prosecuted and punished in the county where such death may happen."

This provision was copied into our statutes from those of Massachusetts, and has been in force there since 1795. It has

also been in force in Wisconsin for many years; and yet I am not aware of any case having arisen under it in either of those States, nor have I discovered that a like provision exists in any other State, although a similar one has long been in force in England.

It was objected that inasmuch as Tyler did no criminal act within the limits of this State, he could not be held amenable within our jurisdiction for an act committed in Canada; but a majority of the Court were clearly of opinion, that the provision was within the scope of the legislative power of the State. It is, I believe, the only reported case in which that provision has come in question, and I am not able to appreciate the argument by which it is sought to be annulled on the ground of unconstitutionality. (See 8 Mich. R. 231.)

The case of Tyler has been taken by writ of error to the Supreme Court of the United States.

In my last report I embodied the material facts of the case of the State of Michigan against the Phœnix Bank of the city of New York. At that date the case was pending on appeal in the general term of the Superior Court of that city. That court decided the appeal, on the 23d of June last, by reversing the judgment and awarding a new trial. As I was not aware of the existence of any facts of importance not proved in the court on the two former trials, and as the laws of New York authorized an appeal from the decision of the general term to the Court of Appeals, which is the court of the last resort in that State, I took an appeal to the latter court, and the case is now pending therein. Preparatory to the final argument of the case in the Court of Appeals, and in compliance with the rules of the court, I have caused to be printed all the pleadings and proofs in the case, and furnished copies to Mr. Jernegan, the counsel for the State, in New York city.

At the last April term of the Supreme Court, I appeared for the State and argued the following cases in addition to

that of Tyler: The State *vs.* Crippen; same *vs.* Cross; same *vs.* Dillon; same *vs.* Koster; same *vs.* Pond; same *vs.* Welles; and also the matter of Mason on *habeas corpus*, which cases are reported in the 8th Vol. of Michigan Reports.

In the month of November, 1859, I learned that in negotiating the St. Mary's Ship Canal Loan, authorized by act of 1859, the State Treasurer had parted with the bonds to the amount of $50,000 without obtaining cash for them, or any adequate security for the amount. After much fruitless effort on his part to obtain payment or security from Messrs. Hazelton & Co., to whom they had been delivered, the Governor and myself repaired to New York city the last of December for the purpose of doing all in our power to save the State from loss. The transaction by which that amount of the bonds was delivered, not for cash, but on credit, was wholly unauthorized by law, but between its date, which was the first of July, and the time it came to the knowledge either of the Governor or myself, the bonds had been converted into money by Hazleton & Co., and passed beyond their control, and the firm itself had stopped payment, so that there was no possibility of recovering the bonds themselves, which might probably have been done had the fact been promptly communicated to me of the illegal transaction.

As the matter was then situated all that could be done was to obtain security for the amount due from that firm; and after the most earnest efforts and spending several days in New York, the Governor and myself finally succeeded in obtaining from two members of the firm, Mr. Geo. M. Dewey and Mr. Edmund H. Hazelton, and from the latter's wife, a mortgage upon all their real estate in Michigan, together with some personal securities of no great value as collateral to the debt of $50,000. The mortgage covered about 10,000 acres of land in this State, and some valuable city property in the city of Flint, Genesee county.

I employed two skillful men to investigate the title of these

lands and make out abstracts, and have filed a bill of foreclosure in the Circuit Court of Genesee county for the purpose of making the money.

A annex hereto a schedule* containing an abstract of the reports made to me for the present year by the Prosecuting Attorneys of twenty-two counties only. No other reports have reached me.

I have the honor to be, &c.,

J. M. HOWARD,

Attorney General.

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*See Joint Documents, for 1860.